

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re

Barry E. Disbennett
Kimberly L. Disbennett

Case No. 16-55518
Chapter 13
Judge Preston

Debtors

**MOTION TO AVOID JUDICIAL LIENS ON REAL PROPERTY
PURSUANT TO 11 U.S.C. § 522(f)(1)(A)**

Barry E. Disbennett and Kimberly L. Disbennett (the "Debtor," whether individually or collectively)
move the court pursuant to 11 U.S.C. § 522(f)(1)(A) and Federal Rules of Bankruptcy Procedure 4003(d)
and 9014 for an order granting this motion to avoid the judicial liens of

State of Ohio Department of Taxation (the "Creditor").

Memorandum in Support

(1) The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on
August 25, 2016 (the "Petition Date").

(2) As of the Petition Date, the Debtor was the owner of the following real property located at
206 N. Maple Street, Marysville, OH 43040 (the "Property").

The Debtor owns the Property by:
quit claim deed recorded 5.11.2005 at OR v. 610 pg 991, Union County Recorder's Official Records

[X] A legal description of the property is attached as Exhibit A.

(3) The value of the Property as of the Petition Date, as set forth in the
schedules

is \$ 155,000.00.

(4) The Debtor's interest in the Property as of the Petition Date was \$ 155,000.00.

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts
specified and in the relative priority set forth below:

First mortgage/lien: Bank of NY Mellon (DiTech) in the amount of \$ 178,683.00 recorded on May
11, 2005, in the amount of \$ 178,683.00 recorded on May 11, 2005.

(6) The Creditor obtained several judgments in the following amounts and on the following dates:

i.	\$8,432.00	2.11.2008	2008CJ0087
ii.	\$10,879.59	10.16.2009	2009CJ0841
iii.	\$3,539.98	2.24.2010	2010CJ0149
iv.	\$8,273.08	12.31.2012	2012CJ1120
v.	\$5,462.19	12.31.2012	2012CJ1121
vi.	\$835.74	12.31.2012	2012CJ1122

in the Union County Common Pleas Court.

(7) The Debtor has claimed or is entitled to claim an exemption in the Property in the amount of \$ 273,850.00 pursuant to ORC 2329.66(A).

(8) 11 U.S.C. § 522(f)(2)(A) provides that "a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any lien." 11 U.S.C. § 522(f)(2)(A).

(9) Using the formula set forth above, the judicial lien of the Creditor impairs the Debtor's exemption, wherefore the judicial lien of the Creditor is avoidable pursuant to 11 U.S.C. § 522(f)(2)(A). In this case we have the following values:

a. Amount of judicial liens (total)	\$	<u>37,422.58</u>
b. Amount of all other liens	\$	<u>178,683.00</u>
c. Value of exemptions	\$	<u>273,850.00</u>
d. Total: lines a+ b + c =lined	\$	<u>489,955.58</u>
e. Value of the Debtor's interest in the Property	\$	<u>178,683.00</u>
f. Subtract line e from line d	\$	<u>311,272.58</u>

Extent of exemption impairment: \$ 273,850.00

If line f is equal to or greater than line a, the entire judicial lien is avoided. If line f is less than line a, a portion of the judicial lien may be avoided.

(10) Upon issuance of an Order granting debtors' Motion to Avoid Judicial Liens the judicial lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the judicial lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the judicial lien.

Motion 522(t)(1)(A) (12/14)

WHEREFORE, the Debtor requests that the court grant the Motion to Avoid Judicial Liens on Real Property pursuant to 11 U.S.C. § 522(f)(1)(A).

Respectfully submitted,

/s/ John F. Cannizzaro

John F. Cannizzaro #0005096

Cannizzaro, Bridges, Jilisky & Streng, LLC

302 South Main Street

Marysville, OH 43040

Ph: (937) 644-9125

Fx: (937) 644-0754

bkadmin@cfbjs.com

Notice of Motion

Debtor, **Barry E. Disbennett and Kimberly L. Disbennett**, have filed a Motion to Avoid Judicial Liens on Real Property pursuant to 11 U.S.C. § 522(f)(1)(A).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before twenty-one (21) days from the date set forth in the certificate of service for the motion, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to:

United States Bankruptcy Clerk's Office
170 N. High Street
Columbus, OH 43215

OR your attorney must file a response using the court's ECF System.

The court must receive your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to:

John F. Cannizzaro, 302 South Main Street, Marysville, OH 43040;
Frank M. Pees, Chapter 13 Trustee, 130 E. Wilson Bridge Rd., #200 Worthington, OH 43085;
U.S. Trustee's Office, 170 N. High St., Suite 200, Columbus, OH 43215;

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

Date: August 26, 2016

/s/ John F. Cannizzaro

John F. Cannizzaro #0005096

302 S. Main Street

Marysville, OH 43040

Certificate of Service

I hereby certify that true and accurate copies of the foregoing Motion to Avoid Judicial Liens on Real Property pursuant to 11 U.S.C. § 522(f)(1)(A) and Notice of Motion were served on August 26, 2015 on the following registered ECF participants, electronically through the Court's **ECF System** at the email address registered with the Court:

Frank Pees, Chapter 13 Trustee, 130 E. Wilson Bridge Rd #200, Worthington, OH 43085;
Office of the US Trustee, 170 N. High Street, Suite 200, Columbus, OH 43215-2403;

And on the following parties by **regular U.S. mail**:

Barry E. Disbennett and Kimberly L. Disbennett
206 N Maple Street
Marysville, OH 43040;

And on the following parties by **certified mail, return receipt requested**:

State of Ohio Department of Taxation
Attn: Bankruptcy Division
PO Box 530
Columbus, OH 43266

State of Ohio Attorney General's Office
Revenue Recovery Division
150 E. Gay St 21st Floor
Columbus, OH 43215

/s/ John F. Cannizzaro
John F. Cannizzaro # 0005096
Cannizzaro, Bridges, Jilisky & Streng, LLC
302 S. Main Street
Marysville, OH 43040
Ph: (937) 644-9125
Fx: (937) 644-0754
bkadmin@cfbjs.com

314852

QUIT CLAIM DEED

TODD WILLIAM DISBENNETT, a married man, and BARRY EDSON DISBENNETT, a married man, of Union County, Ohio, the Grantor(s), for valuable consideration paid, grant(s) to BARRY EDSON DISBENNETT and KIMBERLY DISBENNETT, husband and wife, for their joint lives, remainder to the survivor of them, Grantee(s), whose tax mailing address will be 206 NORTH MAPLE ST., the following described property:
MARYSVILLE, OHIO
See Exhibit "A," attached hereto and incorporated herein by this reference for legal description

Subject to the following: The lien of any taxes and assessments not now due and payable; zoning ordinances and regulations; legal highways; and conditions, restrictions, reservations and easements of record.

MRP # 101-03-06-023.000
Prior Instrument Reference-Volume 575, page 269
Property Address-206 North Maple Street/Marysville, Ohio
Permanent Parcel No. 29-0007023.000

LORI DISBENNETT, wife of TODD WILLIAM DISBENNETT, and KIMBERLY DISBENNETT, wife of BARRY EDSON DISBENNETT, release all rights of dower herein.

Executed this 18 day of April, 2005.

TRANSFERRED

MAY 11 2005

MARY H. SNIDER, AUDITOR
This conveyance has been examined and the Grantor
complied with section 319.202 of the Revised Code
FEE \$ 173.80
EXEMPT CMA

STATE OF OHIO
COUNTY OF Franklin, ss:

The foregoing instrument was acknowledged before me this 18 day of April, 2005 by TODD WILLIAM DISBENNETT, LORI DISBENNETT, BARRY EDSON DISBENNETT, and KIMBERLY DISBENNETT.



KENNETH W. LENT
Notary Public, State of Ohio
Commission Expires 10/5/2005

Kent W. Lent
NOTARY PUBLIC

This Instrument prepared by:
Lawrence S. Press
Attorney at Law
3000 Corporate Exchange Drive/Suite 401
Columbus, Ohio 43231

EXHIBIT

A

GR 610 PG 991

EXHIBIT "A"

REAL ESTATE SITUATED IN THE COUNTY OF UNION, IN THE STATE OF OHIO, AND IN THE CITY OF MARYSVILLE, AND BOUNDED AND DESCRIBED AS FOLLOWS:

Top of Paris

PART OF SURVEY NO. 3354.

BEING ALL OF LOTS NOS. THREE (3) AND FOUR (4) OF THE DIVISION OF THE STERRET FARM MADE BY JOHN CASSELL NO. 25, 1854, REFER TO TRANSCRIBED PLAT BOOK NO. ONE PAGES 26 AND 27, BUT EXCEPTING THEREFROM A LOT FIFTY (50) FEET IN WIDTH OFF THE NORTH SIDE THEREOF, CONTAINING .35 ACRES MORE OR LESS.

NEW SURVEY AND DESCRIPTION
REQUIRED BEFORE NEXT TRANSFER

.35 Ac

DATE 5/9/05 SB
STEVE STOLTE UNION CO. ENG

BS

KD

TERESA L. MARKHAM
RECORDER, UNION CO., OHIO

2005 MAY 11 PM 12:21
28 CC

DR 610 PS 992